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of Tort Claimant Creditors***UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

THE DIOCESE OF CAMDEN, NEW JERSEY,

Debtors.

Chapter 11

Case No.: 20-21257 (JNP)

Honorable Jerrold N. Poslusny, Jr.

Hearing Date: March 24, 2021 at 10:00 a.m.

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANT CREDITORS FOR AN ORDER
COMPELLING THE DEBTOR TO COMPLY WITH RULE 2004 SUBPOENA**

The Official Committee of Tort Claimant Creditors (the “Committee”) of the Diocese of Camden, New Jersey, (the “Debtor” or the “Diocese”) by and through its undersigned attorneys, Lowenstein Sandler LLP, hereby submits this memorandum of law in support of the Committee’s Motion for an Order Compelling Debtor to Comply with a Rule 2004 Subpoena (the “Motion”) and respectfully states as follows:

INTRODUCTION¹

1. From the outset of its appointment, the Committee has attempted to investigate the Debtor's assets, financial condition, and insurance coverage so that it could determine the assets available for the payment of survivor claims. One of the most significant issues in this case is determining the true ownership of assets held by the Parishes and Other Catholic Entities and assets purportedly held in trust by the Debtor for those entities. The Committee is also investigating claims that the Debtor may hold against the Parishes and Other Catholic Entities, such as claims for avoidable transfers.

2. The Committee has endeavored to work cooperatively with the Debtor regarding its investigation and to obtain the documents it needs informally. However, despite its complaints regarding fees in this case, it has been the Debtor that has delayed and obstructed discovery at every turn, causing the Committee's professionals to spend more time and incur more fees, and ultimately necessitating this Motion.

3. The Debtor has produced only around 600 documents in the four months that the Committee has been involved in this case, and key documents, such as the Quinquennial Reports, have not yet been produced. Not having success with obtaining documents informally, the Committee served a Rule 2004 subpoena on the Debtor so that it could continue to make progress in its investigation. The Committee met and conferred with the Debtor and has made numerous attempts to work with the Debtor to resolve its outstanding document requests, presenting options to get the documents it needs as quickly and efficiently as possible.

4. The Debtor has not produced a single document in response to the subpoena, nor has it heeded the Committee's suggestion to provide the Committee with a native copy of the

¹ Capitalized terms not defined in this Introduction shall have the meaning ascribed to them below.

Debtor's accounting system. This would allow the Committee's advisors to efficiently review and analyze the accounting data (which will satisfy a number of the outstanding requests) and to narrow and target other document requests based on their findings.

5. The Debtor has already filed a proposed Plan of Reorganization [Dkt. 306] and Disclosure Statement [Dkt. 305], which would provide releases to the Parishes and Other Catholic Entities without requiring them to contribute anything to the Trust. The Disclosure Statement and Plan cannot be considered until the Committee has had an adequate chance to investigate the assets of the Estate and the claims the Debtor may hold against the Parishes and Other Catholic Entities. The discovery sought by the subpoenas is critical to the Committee's investigation of the Debtor's assets, liabilities, and ability to confirm a Chapter 11 plan and falls squarely within the bounds of Rule 2004.

BACKGROUND

A. General Background

6. On October 1, 2020 (the "Petition Date"), the Debtor filed a voluntary petition (the "Petition") for relief under Chapter 11 of the Bankruptcy Code in this Court. The Debtor continues operating its business as a debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

7. On October 23, 2020, the Office of the United States Trustee appointed the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code.

8. There are sixty-two parishes (the "Parishes") within the Debtor's territory and at least twenty-seven schools (the "Schools" and together with the Parishes and other Catholic entities associated with the Diocese, the "Other Catholic Entities")² operating along with the

² It is unclear from the Application, Hughes Declaration, and the Diocese website exactly how many schools are affiliated with the Debtor.

Diocese. *See Declaration of Reverend Robert E. Hughes Regarding Structure and Pre-Filing History of the Diocese of Camden, New Jersey, and in Support of the Chapter 11 Petition and First Day Pleadings* [Dkt. 3] (the “Hughes Decl.”) ¶¶ 57, 63–65. The Debtor has not provided a definitive list of the Other Catholic Entities in any of its pleadings.

9. The Other Catholic Entities are *not* debtors in this Chapter 11 Case and have not otherwise sought relief under the Bankruptcy Code. *See Memorandum of Law in Support of Entry of Order to Show Cause for a Temporary, Preliminary, and Permanent Injunction* [Adv. Pro. Dkt. 2] at 4. The Debtor goes to great pains to argue that the Other Catholic Entities are “separate civil corporations . . . with their own employees and maintain their own books, records, bank accounts and employee payrolls.” *See id.* at 3–4.

10. The Debtor provides operational support to Catholic parishes, schools and other Catholic entities that operate within the territory of the Diocese. *See Declaration of Laura J. Montgomery Regarding the Diocese’s Assets and Operations and in Support of the Chapter 11 Petition and First Day Pleadings* [Dkt. 4] (the “Montgomery Decl.”) at ¶ 8. The Debtor also conducts school operations through which it provides Parish schools with financial support. *Id.*

11. The Debtor, in providing operational and financial support to Other Catholic Entities, has access and control to various accounts. Certain of these funds are permitted to be comingled with the Parishes and Other Catholic Entities’ funds. *See Montgomery Decl.* ¶ 43.

12. On December 31, 2020, the Debtor filed its proposed *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code Describing Chapter 11 Plan Proposed by the Debtor-in-Possession*, Dkt. 305 (the “Disclosure Statement”) describing the proposed *Plan of Reorganization*, Dkt. 306 (the “Plan”).

B. Informal Discovery Requests

13. Immediately after its counsel was retained, the Committee began its investigation into the assets of the Estate. In an attempt to work cooperatively with the Debtor, on October 30, 2020, the Committee sent informal document requests to the Debtor. *See* Certification of Michael A. Kaplan, Esq. (“Kaplan Cert.”), Ex. A.

14. On November 16, 2020, the Committee requested that the Debtor provide a copy of its quinquennial report (“Quinquennial Report”) from 2019. *See id.*, Ex. B.

15. The Quinquennial Report is a mandatory report that the Diocese of Camden submits every five years in anticipation of the Bishop’s *ad limina* visit to the Vatican. *A Message from the Bishop—Our Report to Rome*, Catholic Star Herald (May 26, 2011), <https://catholicstarherald.org/a-message-from-the-bishop-our-report-to-rome/>. The Bishop consults with “priests, deacons, religious and laity in the writing of [the] report.” *Id.* The Vatican and the nuncio in Washington, D.C. receive copies of the report which is “[f]illed with data and statistics.” Carl Peters, *Bishop Sullivan Prepares for a Pilgrimage to Rome*, Catholic Star Herald (Nov. 14, 2019), <https://catholicstarherald.org/bishop-sullivan-prepares-for-a-pilgrimage-to-rome/>. The data and statistics included in this report are essential to the Committee’s ability to assess the representations made in the Disclosure Statement and the viability of the Plan.

16. The Debtor provided the Committee with three heavily redacted pages from the 2019 Quinquennial Report; however, a key financial figure is denoted by an asterisk, and the lines directly below that figure as well as the footer are redacted. Kaplan Cert. ¶ 4. The Committee immediately raised this issue with the Debtor and asked for the redacted information, which the Debtor has not provided to date. *Id.* ¶ 4.

17. In response to the informal requests, the Debtor made eight productions to the Committee consisting of 608 documents. *Id.* ¶ 5. The last production the Committee received from the Debtor was made on December 23, 2020. *Id.* ¶ 5.

18. The documents provided fell into the following categories: corporate formation documents and certificates of incorporation; Parish trust agreements; documents regarding consolidation and mergers of Parishes; IVCP Protocols; minutes and resolutions of the board of trustees of the Debtor; real estate deeds; litigation documents; real estate transaction records; settlement agreements and releases; insurance coverage letters; revolving fund statements of Other Catholic Entities; Investment Committee minutes; and documents regarding the assets of Diocese of Camden Trusts, Inc. *Id.* ¶ 6.³

19. The documents produced by the Debtor were responsive to only twenty-six of the Committee's fifty-five total informal requests. The Debtor claimed to have no responsive documents for seven of the Committee's fifty-five total requests. The Debtor did not respond to twenty-two of the Committee's fifty-five total informal requests. *Id.* ¶ 7.

20. The parties agreed to mediate the bar date motion and other issues with Chief Judge Michael B. Kaplan. The mediation spanned from approximately November 25, 2020 to January 5, 2021. During the mediation, the parties proceeded on an informal basis regarding discovery, following the parameters Judge Kaplan established via a November 27, 2020 email, which included a standstill period during which motion practice (including discovery motions) were not permitted. *Id.* ¶ 8.

³ The Committee also sent a separate set of informal requests to the Debtor for insurance-related documents. In response, the Debtor has produced the insurance policies and *some* coverage letters. Given the lack of progress, on February 2, 2021, the Committee served formal insurance-related document requests on the Debtor pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Bankruptcy Rules 9014, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure.

21. Unfortunately, the mediation was unsuccessful. *Id.* ¶ 9. Given the breakdown of the mediation and the lack of progress made on discovery, on January 6, 2021, the Committee sent a letter to counsel for the Parishes, copying all parties, informing them that the Committee was withdrawing its informal requests and that it would be serving formal discovery on the Catholic entities. *Id.*; *see* Kaplan Cert., Ex. C.

22. In the four months since the Committee has been involved in this case, the Committee has received only 608 documents and the majority of its document requests remain outstanding.

C. Rule 2004 Subpoena to the Debtor

23. On January 8, 2021, the Committee served a subpoena upon the Debtor pursuant to Federal Rule of Bankruptcy Procedure (“Rule”) 2004 and D.N.J. LBR 2004-1. *See* Kaplan Cert., Ex. D (the “Subpoena”).

24. The Debtor accepted email service of the Subpoena on January 11, 2021. Kaplan Cert. ¶ 11.

25. Pursuant to the Subpoena, the Debtor was commanded to produce the documents requested by January 29, 2021 and appear to testify at an examination. Kaplan Cert., Ex. D.

26. On January 28, 2021, counsel for the Committee, Debtor, Parishes, and Other Catholic Entities held a meet and confer regarding the documents requested in the Subpoena issued to the Debtor, as well as other subpoenas issued to Other Catholic Entities. Kaplan Cert. ¶ 13. During that meeting, the Debtor and Other Catholic Entities represented that the documents requested from the Other Catholic Entities are housed with the Debtor and that the Debtor would handle producing any documents on behalf of the Other Catholic Entities. *Id.* ¶ 14. The Committee

agreed with this approach, reserving its right to request any documents solely in the possession of the Other Catholic Entities.⁴ *Id.* ¶ 14.

27. The parties also discussed during the meet and confer that providing the Committee with a copy of the Debtor's accounting system would greatly expedite the discovery process. *Id.* ¶ 15. The Committee offered to table its other document requests pending receipt of the accounting system so it could narrow the other document requests after reviewing and analyzing the accounting data. *Id.* ¶ 15.

28. Additionally, since the Committee also served a Rule 2004 subpoena on PNC Bank, NA ("PNC") which PNC agreed to voluntarily comply with, the Committee agreed it would attempt to obtain documents such as bank statements from PNC to avoid duplication of efforts. *Id.* ¶ 16. Specifically, the Committee will obtain the documents in Request Nos. 15, 17, and 36, and some of the documents for Request No. 41 from PNC in the first instance rather than from the Debtor.

29. Finally, the Debtor represented it had already produced all documents responsive to, or does not have any documents responsive to, Request Nos. 2–5, 11, 14, 16, 18, 20, 21, 37 and 42. Accordingly, the Committee is not seeking compliance with those specific requests through this Motion.

30. These are the Committee's outstanding requests to the Debtor, which the Committee is seeking compliance with through this Motion:⁵

⁴ The Committee also served Rule 2004 subpoenas upon the Parishes and Other Catholic Entities. Kaplan Cert. ¶ 12. The Committee has not included those entities here, as it understands the relevant documents are in the Debtor's possession, custody, or control. The Committee reserves the right to file motions to compel compliance with those subpoenas in the event that any document requests remain outstanding following the Debtor's production pursuant to this Motion.

⁵ Document requests marked with an asterisk may be fulfilled or partially fulfilled with native backup copies of NAV and ParishSoft.

Request No.	Document Request
1	The Diocese's quinquennial reports from the last ten years in their complete, unredacted form.
6	For each Parish Trust, financial records from inception of the trust through the Petition Date concerning (i) the initial funding of each trust, (ii) the source of the initial funding, (iii) all additions to the trust fund, (iv) all distributions and disbursements, and (v) all fees, taxes, and administration expenses.
7	For each Parish Trust, all Documents concerning any instance where a Parish compelled a distribution from the Parish Trust in the last ten years.
8	To the extent not previously provided, all additional Documents concerning any requests by a Parish for financial and/or accounting records for the Parish Trust in the last ten years.
9	To the extent not previously provided, for each Parish Trust, all additional financial and/or accounting records provided by the Debtor to the Parishes in the last ten years.
10	If the assets held in any Parish Trust were commingled at any time with any other trust or the Debtor's assets in the last ten years, documents sufficient to identify all accounts that held funds belonging to the Parish Trust.
12	Documents sufficient to separately identify all sums paid to or for the benefit of the Debtor from each Parish Trust in the last ten years for any reason, including (i) the date of each payment, (ii) the amount, (iii) the individual who authorized the payment, (iv) the recipient, and (v) a description of why the payment was made.
13	Documents sufficient to identify all persons or entities that assisted the Debtor with fulfilling its legal obligations stemming from each Parish Trust.
19	To the extent not previously provided, all additional Documents sufficient to show the ownership of all real property within the Diocese, including property owned by the Other Catholic Entities.
22*	Documents sufficient to show all other transfers of property from any Other Catholic Entity to the Debtor in excess of \$10,000.
23*	Documents sufficient to show all other financial transfers or transfers of value between the Debtor and the Other Catholic Entities in excess of \$10,000, including documents regarding the \$30,075,000 transferred by the Debtor to the Diocese of Camden Healthcare Foundation, Inc. in 2016.
24	All written agreements between the Debtor and the Other Catholic Entities.
25	Documents sufficient to show all services, including operational support, provided by the Debtor to the Other Catholic Entities.
26*	Copy of the electronic accounting system(s), cash management systems, and donation tracking systems in native format(s) (e.g., electronic data files for Financial Edge, QuickBooks, Navision, Dynamics GP / Great Plains) for the Debtor and the Other Catholic Entities.

27	To the extent not previously provided, all additional monthly and annual financial statements for the Debtor (including balance sheet, income statement, and statement of cash flows), including the accompanying notes and disclosures, for the past ten years.
28	All monthly (or other periodic) closing packages or files, including adjusting journal entries, reconciliations, bank statements, fixed asset changes, amortization schedules, and depreciation schedules, for the past ten years.
29	All reports prepared for the Debtor by an auditor or accounting firm, including related financial statements, notes, and any supplemental schedules, for the past ten years.
30	All Documents concerning the audit reports, including but not limited to, prepared-by-client (PBC) documents, management letters, letters of representations, and documents concerning determination of compliance with financial covenants related to any borrowings, for the past ten years.
31	All Communications from any of the Other Catholic Entities to the Debtor requesting an audit report concerning the Debtor, and all Communications from the Debtor providing a copy of an audit report concerning the Debtor to any of the Other Catholic Entities.
32	All Communications from the Debtor providing an audit report concerning the Debtor to a third party on behalf of any of the Other Catholic Entities.
33	Internal accounting manuals issued or utilized by the Debtor concerning the Other Catholic Entities.
34	All of the Debtor's contracts with investment advisors, policies, and instructional or procedure books outlining investment procedures concerning the Other Catholic Entities, for the past ten years.
35*	Documents sufficient to show all bank, money market, investment, or other accounts maintained by the Debtor over the past ten years (whether currently open or closed), including institution, account name, account type, account description, account number, general ledger account number, open date, close date, and current balance.
38*	For all pooled investment accounts, deposit and loan funds, and the fund known as the Diocese's "Revolving Fund" (including but not limited to the investment accounts identified in paragraph 41 of the Montgomery First Day Declaration): (i) Documents concerning sources of initial funding, (ii) Documents concerning sources of subsequent funding, (iii) investment or brokerage account statements, (iv) an identification/listing of current and historical subaccounts or subfunds, (v) periodic reports, summaries, and schedules provided to participants, (vi) subaccount or subfund activity, reports, and statements provided to individual participants, and (vii) Documents showing historical transactions, including transaction Documents for deposits, withdrawals, interest, and dividends.
39*	Underlying transaction data in electronic format (e.g. Excel, Access, SQL) used to generate the "Revolving Fund Statements" (Bates numbers DOCNJ_007099 – DOCNJ_007402).
40	All Documents evidencing loan obligations or guarantees by the Debtor on behalf of any of the Other Catholic Entities.

41*	All historical activity schedules for all of the Debtor's credit facilities detailing any draws, paydowns, interest accruals, or similar transactions.
42	All business plans and associated financial projections prepared for or by the Debtor.
43*	Accounts receivable aging schedules, including identification of specific Other Catholic Entities and detail/support for related offsetting allowances.
44*	Loans receivable aging schedules, including identification of specific Other Catholic Entities and detail/support for related offsetting allowances.
45	Asset listings or schedules regarding unrestricted (including designated and donor advised funds), temporarily restricted, and permanently restricted assets for the Debtor.
46	Documents sufficient to show any donor restrictions applicable to any funds in the Debtor's possession or control in excess of \$10,000.
47	Documents sufficient to identify funds set aside for the care, maintenance, and/or operations of cemeteries within the Diocese.

31. On February 16, 2021, the Committee sent a letter to the Debtor to amicably resolve the pending Rule 2004 document requests, laying out two options to resolve many of the outstanding requests. *See* Kaplan Cert., Ex. F. The Committee reiterated that getting (i) a complete SQL backup of the Debtor's Microsoft Dynamics / NAV accounting system ("NAV") in native format, and (ii) a native export from ParishSoft, the accounting system used for the Parishes and Other Catholic Entities which the Debtor is able to access, would be the most efficient and cost-effective way to move forward with discovery. The Committee noted that this would enable the Committee to further refine and narrow the other requests in the Rule 2004 subpoenas. The letter also provided an alternative option for the Debtor to provide all of the data in NAV by exporting the approximately 1,100 tables, which would be more time-consuming, costly, and far more inefficient for both the Debtor and the Committee. *See id.* In the Committee's view, the alternative option is not a workable option given the complexity of the accounting system, requirements to evaluate each table for the appropriate primary keys or indexing fields needed to link the tables, and the extensive questions and follow up that would be required.

32. As of the filing of this Motion, the Committee has not received a response to its letter from the Debtor, despite one being promised by Friday, February 19, 2021. Kaplan Cert. ¶ 18.

33. To date, Debtor has not produced all of the documents requested in the Subpoena. Kaplan Cert. ¶ 19.

34. Lack of disclosure deprives the Committee, and therefore the Court and all creditors, the ability to fully evaluate and investigate the Debtor's assets and operations.

35. The Debtor should be compelled to produce documents and information sought by the Committee pursuant to the Subpoena and to appear for an examination.

RELIEF REQUESTED

36. By this Motion, the Committee respectfully requests that this Court enter an Order (i) compelling the Debtor to immediately furnish the requested documents set forth in the subpoena previously served upon it by the Committee pursuant to Rule 2004 and District of New Jersey Local Bankruptcy Rule 2004-1; (ii) compelling the Debtor to appear for the taking of a Rule 2004 examination; and (iii) granting such other relief as the Court deems just and proper.

LEGAL ARGUMENT

A. The Committee's Subpoena to the Debtor is Well Within the Broad Scope of Rule 2004 and is Consistent with its Purpose.

37. In the District of New Jersey, a Rule 2004 motion is not required; instead, any party represented by counsel can serve a Rule 2004 subpoena using National Director's Form 2540. *See* D.N.J. LBR 2004-1(b). If the examinee fails or refuses to comply with a Rule 2004 subpoena, "the party issuing the subpoena may file a motion for an order directing an examination or document production under Bankruptcy Rule 2004." D.N.J. LBR 2004-1(e).

38. The scope of a Rule 2004 examination is particularly broad. *See* Fed. R. Bankr. P. 2004(b). Examinations under Rule 2004 include within their scope, *inter alia*, any matter that may relate to the property and assets of the estate; the financial condition of the debtor; and any matter that may affect the administration of a debtor's estate. *See* Fed. R. Bankr. P. 2004(b); *see also In re Teleglobe Commc'ns Corp.*, 493 F.3d 345, 354 n.6 (3d Cir. 2007) (“[Rule 2004] allows parties with an interest in the bankruptcy estate to conduct discovery into matters affecting the estate.”); *Off. Comm. of Unsecured Creditors of Cybergenics Corp.*, 330 F.3d 548, 564–65 (3d Cir. 2003) (“[A] creditors’ committee may certainly assist a debtor in locating property under Bankruptcy Rule 2004”).

39. Courts have consistently recognized the extraordinarily broad scope of an examination under Rule 2004. *See, e.g., In re Washington Mut., Inc.* 408 B.R. 45, 50 (Bankr. D. Del. 2009) (“A Rule 2004 examination ‘is commonly recognized as more in the nature of a ‘fishing expedition.’”) (citations omitted); *In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 456 (Bankr. D.N.J. 1998) (“A Rule 2004 exam has been explained as a broad investigation into the financial affairs of the debtor for the purpose of the discovery of assets of the estate and the exposure of fraudulent conduct.”); *In re Summit Glob. Logistics, Inc.*, No. 08-11566 (DHS), 2008 WL 1446722 at *2 (Bankr. D.N.J. Apr. 9, 2008) (“Courts, in fact, recognize that Rule 2004 examinations are broad, unfettered and in the nature of fishing expeditions.”); *In re Mezvinsky*, No. 00-10745DWS, 2000 WL 33950697 *6 (Bankr. E.D. Pa. Sept. 7, 2000) (recognizing that the scope of inquiry permitted under a Rule 2004 examination is generally broad and that such inquiry can “legitimately be in the nature of a ‘fishing expedition’”); *see also* 9 Collier on Bankruptcy ¶ 2004.02[1] at 2004-6 (15th ed. Rev. 1997).

40. Any third parties with knowledge of the debtor's affairs are subject to a Rule 2004 investigation. *See In re Summit Glob.*, 2008 WL 1446722, at *2. "Potential examinees include third parties that possess knowledge of the debtor's acts, conduct, liabilities or financial condition which relate to the administration of the bankruptcy estate." *In re Millennium Lab Holdings II, LLC*, 562 B.R. 614, 626 (Bankr. D. Del. 2016) (internal quotations omitted); *In re DeWitt*, 608 B.R. 794 (Bankr. W.D. Pa. 2019).

41. The scope of the inquiry is extraordinarily broad because the purpose of a Rule 2004 examination is to assist a party in interest "to discover and investigate how to bring to light possession of assets of the debtor that might be intentionally concealed or overlooked in ignorance or haste." *In re Summit Glob.*, 2008 WL 1446722, at *2 (quoting *In re Valley Forge Plaza Assocs.*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990)).

42. That is exactly what the Committee seeks by the Rule 2004 subpoena. The investigation of potential claims is a proper use of Rule 2004 discovery, even where the examination is undertaken to determine whether an action may lie against a third party. *See In re Lev*, No. 05-35847, 2008 WL 207523 at *2–3 (Bankr. D.N.J. Jan. 23, 2008) (denying motion to quash trustee's 2004 subpoena to facilitate investigation of transactions between debtor and third party).

43. The Committee represents the largest creditor constituency in this bankruptcy case, and the Debtor's Chapter 11 plan directly affects such creditors' potential recovery in this bankruptcy.

44. In the context of operational and financial support, not to mention the express commingling of assets, the relationship between the Debtor and Other Catholic Entities must be examined to determine whether assets held by Other Catholic Entities should be part of the Estate

and whether any claims, such as for fraudulent transfer, exist. Only through analysis of that information can the Committee and its counsel perform their role and obligations in this case.

B. Obtaining Native Copies of the Debtor's Accounting System Will Expedite the Discovery Process.

45. As noted above, the Debtor providing the Committee with a backup of NAV and ParishSoft would be the most efficient and cost-effective way to move forward with discovery. The Committee has raised this with the Debtor multiple times and has even offered to table its other requests pending receipt of copies of NAV and ParishSoft.

46. Creating a native backup copy of NAV is simple from a technical perspective and will not be burdensome or costly for the Debtor. It is as simple as selecting the backup option in the underlying SQL database, waiting for the backup to complete (mostly computer time), copying the backup file to a file sharing service or on to a hard drive, and sending it to the Committee.

47. It is the Committee's understanding that the Debtor is withholding access to NAV because NAV contains data not only for the Diocese, but also for transactions and activity involving (a) the Parish Trust Accounts (as defined below), (b) Diocese of Camden Trusts, Inc., ("DOC Trusts") and (c) the Diocese of Camden Healthcare Foundation, Inc. ("Healthcare Foundation"). This is not a proper basis for withholding the NAV data, as the Committee has served valid Rule 2004 subpoenas on the Parishes, DOC Trusts, and Healthcare Foundation, and this third party discovery is well within the scope of Rule 2004. *See, e.g., In re Summit Glob.*, 2008 WL 1446722, at *2.

48. These three entities (in addition to the Other Catholic Entities associated with the Debtor) are the proper subject of the Committee's Rule 2004 investigation, especially as the Debtor's proposed Plan provides that these entities may contribute funds to the Plan that will directly reduce the Debtor's obligations to fund the Plan and, regardless of whether any such

contributions are actually made, will receive wide-ranging third-party releases under the Plan. The relationship and transactions between those three entities and the Debtor represent key issues and potential assets of the Debtor's Estate in this matter, which the Committee must analyze and investigate. For example, while DOC Trusts is purportedly a distinct legal entity from the Debtor, DOC Trusts has pledged assets for and guaranteed the Debtor's loan with PNC for apparently no consideration. The Committee is also investigating an approximately \$30 million transfer from the Debtor to Healthcare Foundation made in 2016.

49. While ParishSoft is used to manage the finances of the Parishes and Other Catholic Entities, it is the Committee's understanding that the Debtor has access to ParishSoft and this system is accordingly within the Debtor's possession, custody, or control. These third parties are the proper subject of the Committee's Rule 2004 investigation, especially as the Debtor's proposed Plan contains wide-ranging third-party releases, including releases for these entities.

50. Providing copies of NAV and ParishSoft would likely partially satisfy about nine of the Committee's outstanding requests to the Debtor. After reviewing the data from NAV and ParishSoft, the Committee would be able to further refine and narrow the other requests in the Rule 2004 subpoenas, for example, by tailoring the requests to particular transactions of interest.

51. Without copies of the accounting system, the Committee will not be able to effectively and efficiently evaluate any tracing analysis put forth by the Debtor, nor will the Committee be able to properly analyze the overall flow of funds and other related tracing issues.

52. Further, without this information, the Committee cannot conduct a proper evaluation of assets potentially available to creditors, pre-petition asset transfers, relationships between the Debtor and non-Debtor entities, and trends in the Debtor's operating performance and financial condition that are essential in assessing the Debtor's plan of reorganization. In short, the

Committee needs this information to be able to assess whether creditors would receive fair and equitable treatment under the Plan.

53. Given that this would be a more efficient and cost-effective way to handle discovery, the Debtor's failure to provide native backups of its accounting system and the related delay this has caused the Committee's investigation shows that the Debtor is not interested in working cooperatively with the Committee, but is instead focused on delay and obstruction.

C. Each of the Document Requests from the Committee's Subpoena are for Information Vital to the Committee's Investigation Regarding the Debtor's Assets.

54. The Committee's document requests in the Subpoena to the Debtor are each necessary for the Committee's investigation regarding the Debtor's assets.⁶

55. Request No. 1 is for "[t]he Diocese's quinquennial reports from the last ten years in their complete and unredacted form." Subpoena Request ¶ 1. Despite multiple requests from the Committee, the Debtor has failed to produce the requested Quinquennial Reports in their complete and unredacted form. *See* Kaplan Cert. ¶¶ 3–4. The Quinquennial Reports include a recitation of the Debtor's then-present financial circumstances, a topic which is indisputably germane. Since these reports are prepared every five years, this request is for *literally two documents*.

56. The requested Quinquennial Reports are not protected by privilege, as the Debtor has previously claimed. The Clergy-Communicant Privilege only applies to "communications made (1) to a clergyperson (2) in his or her spiritual and professional capacity (3) with a reasonable expectation of confidentiality." *In re Grand Jury Investigation*, 918 F.2d 374, 384 (3d Cir. 1990). Archbishops may—and do—freely publish the Quinquennial Reports online. *See e.g., Quinquennial Report Archdiocese of Saint Boniface 2006-2015*,

⁶ Capitalized terms used in this section have the meanings ascribed to them in the Subpoena, Kaplan Cert., Ex. D.

<https://www.archsaintboniface.ca/media/Relation-quinquennale-Quinquennial-Report-2006-2015/Quinquennial-report---English-version-for-Website.pdf>. The contents of such a report are not the confidential communications between clergy and penitent. On a motion to compel in the United States District Court for the District of Vermont, the plaintiff sought discovery from a Diocese in a sexual abuse case and the court ordered the Diocese to provide the Quinquennial Reports dating back to 1975. *See Shovah v. Mercure*, No. 2:11-CV-201, 2013 WL 12226890, at *3 (D. Vt. Oct. 30, 2013). Additionally, the Third Circuit and New Jersey have not adopted the Self-Critical Analysis Privilege. It is clear, the Quinquennial Report is not a privileged document and must be produced.

57. Request No. 6 is for “financial records from inception of the trust through the Petition Date” for each Parish Trust. Subpoena Request ¶ 6. Thus far, the Debtor has only produced internal statements generated from its accounting system (the “Revolving Fund Statements”) for the revolving fund (the “Revolving Fund”) holding funds for the Parish Trusts for the single year preceding the petition date.⁷ Meanwhile, the Declaration of Trust and Trust Agreements (“Parish Trust Agreements”) that have been produced indicate that 95% of the Parish Trusts were formalized between 2010 and 2012—years before October 2019 (the date of the earliest Revolving Fund Statement produced).⁸ In addition, the Debtor has indicated that the Parish Trusts existed before 2010. Information going back to the inception of the Parish Trusts is vital to the Committee’s analysis of whether the Parishes are indeed separate entities with distinct assets.

⁷ Based on the Committee’s investigation to date, the Revolving Fund is one of five accounts in the name of the Debtor holding the assets of the Parish Trusts. The other four accounts are known as (i) Targeted General Investment Policy, (ii) Treasury General, (iii) Special Gifts / Tuition Investment, and (iv) Investment Policy (together with the Revolving Fund, the “Parish Trusts Accounts”).

⁸ The Parish Trust Agreements each appear to be identical. Further, approximately 56% of the Parish Trust Agreements were executed in February of 2011.

58. Request No. 7 includes “any instance where a Parish compelled a distribution from the Parish Trust in the last ten years.” *Id.* ¶ 7. The Parish Trust Agreements require the Debtor to distribute to the Parishes requested amounts. The Parish Trust funds are also permitted to be commingled with the Debtor’s funds. In light of these facts, it is important for the Committee to investigate the frequency and amount of any such distributions, as those facts may be relevant in the analysis of whether the Parish Trust funds are actually assets of the estate.

59. Requests Nos. 8–10 are for Parish Trust records from the last ten years. *See id.* ¶¶ 8–10. The Debtor has not produced additional records for each Parish Trust in the last ten years, besides the Revolving Fund Statements for one year pre-petition. For the same reasons as Request No. 6, the Committee needs these records to verify whether the funds allocated to the Parish Trusts are in fact, Parish funds and not assets of the Debtor.

60. Request No. 12 is for documents “which separately identify all sums paid to or for the benefit of the Debtor from each Parish Trust in the last ten years.” *Id.* ¶ 12. The Debtor has not produced such documents for the last ten years. As noted above, Revolving Fund Statements for the one year preceding the date of the filing are insufficient; the Committee instead needs documents going back to the formation and funding of each Parish Trust.

61. Request No. 13 is for “[d]ocuments sufficient to identify all persons or entities that assisted the Debtor with fulfilling its legal obligations stemming from each Parish Trust.” *Id.* ¶ 13. The Debtor has not produced any such documents. The Parish Trust Agreements permit the Trustee (Debtor) to appoint “Trust Advisors” that may attend meetings of the Trustee to carry out the purposes of the Parish Trust. This information is specific to each Trust and essential to the investigatory duties of the committee. The requests are not overbroad simply because the Debtor has purposely entangled itself with so many Other Catholic Entities.

62. Request No. 19 is for “all additional Documents sufficient to show the ownership of all real property within the Diocese, including property owned by the Other Catholic Entities.” *Id.* ¶ 19. The Debtor has previously produced deeds for all Debtor-owned properties; however, the Debtor has not provided documents regarding other real property within the territory of the Diocese, including property that may be titled in the name of a Parish or Other Catholic Entity but is collateral for a loan to or from the Debtor. The Committee required further information regarding any such loans, as laid out further regarding Request No. 24 below.

63. Request No. 22 is for “[d]ocuments sufficient to show all other transfers of property from any Other Catholic Entity to the Debtor in excess of \$10,000.” *Id.* ¶ 22. The Debtor has not provided any documents in response to this request, which is critical to the Committee’s analysis of the assets of the Debtor’s Estate. The NAV and ParishSoft systems would partially allow the Committee to analyze the detailed general ledger and subsidiary ledger transactions to identify cash and real estate transactions in excess of \$10,000. They would allow the Committee to evaluate the cash receipts and disbursement activity for cash related payments and transfers, and may also allow for an evaluation of the fixed asset transactions (if the Debtors and its affiliates utilize this feature).

64. Request No. 23 is for documents sufficient to show financial transfers between the Debtor and Other Catholic Entities that exceed \$10,000. *Id.* ¶ 23. The request includes \$30,075,000 transferred to Healthcare Foundation in 2016. *Id.* In addition, this request includes any assets or funds transferred by the Debtor to DOC Trusts, whether to initially fund or to provide subsequent assistance. There is no doubt that this information is necessary to the Committee’s fulfillment of its investigatory duties. Again, The NAV and ParishSoft systems would partially allow the Committee to identify and analyze cash and real estate transactions in excess of \$10,000.

65. Request No. 24 is for “[a]ll written agreements between the Debtor and Other Catholic Entities.” *Id.* ¶ 24. The Debtor, despite assertions to the contrary, has not produced all written agreements between the Debtor and Other Catholic Entities. For example, the Petition lists fifty-six loans to Other Catholic Entities. *Petition Schedules of Assets and Liabilities and Statement of Financial Affairs* [Dkt. 1] Schedule B, Rider 5 (“Rider 5”). Portions of the loans have been deemed doubtful or uncollectable—listed with uncollectable amounts of *exactly* 100%, 75%, 60%, 50%, 35% and 25%. *See id.* Although Rider 5 indicates that half of the loans are not memorialized by agreement, the other half are and those agreements have not been produced. It is important for the Committee to determine whether any claims exist related to the more than \$25 million in Debtor deemed doubtful or uncollectable notes receivable.

66. Request No. 25 is for “[d]ocuments sufficient to show all services, including operational support, provided by the Debtor to the Other Catholic Entities.” Subpoena Request ¶ 25. The Debtor “provides operational support to the Catholic parishes, schools and certain other Catholic entities” including financial, educational, risk management, pension benefits, and “other administrative and operational support.” Montgomery Decl. ¶ 8. The amount of support is an important factor to investigate the nature of the relationship between and any potential claims among or between the Debtor and the Other Catholic Entities.

67. Request No. 26 is for a copy of the electronic account system(s) in native format. Subpoena Request ¶ 26. The majority of the Committee’s Rule 2004 requests call for financial information that may be contained in the Debtor’s accounting system, so obtaining this information will (a) satisfy (at least partially) a number of the requests, and (b) enable the Committee to further refine and narrow the other requests. As noted above, the Committee has offered two options to the Debtor to comply with this request and urges the court to compel the more efficient process,

which is for the Debtor to provide the Committee with native copies of NAV and ParishSoft. *See* Kaplan Cert., Ex. E.

68. Request No. 27 is for monthly and annual financial statements for the Debtor for the past ten years. Subpoena Request ¶ 27. While the Debtor has produced some audits (as referenced below), other periodic financials will provide a historical view and will help to identify any changes or adjustments that have been made by the Debtor over time. Further, monthly financial information, more so than annual financial information, will more precisely: (i) facilitate the analysis of historical trends, (ii) identify the impact of events or conditions on the Debtor's operations, and (iii) assist in the evaluation of whether the accounting policies or treatments of the Debtor, Parishes, and Other Catholic Entities have changed over time and allow for further follow-up.

69. Request No. 28 is for “[a]ll monthly (or other periodic) closing packages or files, including adjusting journal entries, reconciliations, bank statements, fixed asset changes, amortization schedules, and depreciation schedules, for the past ten years.” *Id.* ¶ 28. The Committee understands that the Debtor maintains these types of records. Closing packages contain detailed information, which is contemporaneously prepared, beyond what is in the accounting system and financial statements, including explanations, detail and/or support for transactions that are otherwise only summarized in the accounting system and financial statements.

70. Request No. 29 is for all audit reports for the Debtor for the past ten years. *Id.* ¶ 29. While the Debtor has produced audit reports from 2014 to 2019, the Committee needs audits going further back to be able to develop and analyze historical trends, relationships, potential changes in accounting policy or transaction treatment, and planning to potentially shelter assets. The notes to the audits also contain important information regarding transfers of assets, relationships with other

entities, and related parties. There is very little burden to produce these audits, which should be readily available and accessible in the Debtor's files.

71. Request No. 30 is for all audit-related documents in the Debtor's possession, including prepared-by-client (PBC) documents, management letters (from the auditor to management), and management representation letters (from management to the auditor) for the past ten years. *Id.* ¶ 30. These documents will provide the Committee with additional detail regarding historical transactions, relationships, and internal controls. Management letters and management representation letters may include discussions of key issues, including the relationships between the Diocese, the Parish Trusts Accounts, DOC Trusts, and Healthcare Foundation (which are all included in the consolidated audits), any transfers of assets, and potential issues with internal controls.

72. Request No. 31 is for "[a]ll Communications from any of the Other Catholic Entities to the Debtor requesting an audit report concerning the Debtor, and all Communications from the Debtor providing a copy of an audit report concerning the Debtor to any of the Other Catholic Entities." *Id.* ¶ 31. The Committee is interested in whether the Other Catholic Entities have requested the Debtor's audits in order to provide them to banks, lenders, or government agencies. If so, these communications will help to establish the pre-petition relationships between the Diocese and its affiliates.

73. Request No. 32 is for "[a]ll Communications from the Debtor providing an audit report concerning the Debtor to a third party on behalf of any of the Other Catholic Entities." *Id.* ¶ 32. These documents would identify third parties that may have performed due diligence on the Debtor, or where guaranties were provided by the Debtor on behalf of Other Catholic Entities.

Such information would shed light on the financial condition of the Debtor or provide insights into the relationship between the Debtor and Other Catholic Entities.

74. Request No. 33 is for “[i]nternal accounting manuals issued or utilized by the Debtor concerning the Other Catholic Entities.” *Id.* ¶ 33. Typically, a diocese prepares manuals and/or instructions in order to assist the parishes and affiliates in (a) preparing their financial statements, (b) keeping their books and accounting records, and (c) preparing the annual assessments and budgets. If such information exists, it would shed light on practices relating to cash management, advances, transfers, fundings, and loans. Such documents will also provide important information as to the relationship and control between the Debtor and the Other Catholic Entities.

75. Request No. 34 is for all of the Debtor’s contracts with investment advisors and investment procedures concerning the Other Catholic Entities for the past ten years. *Id.* ¶ 34. The Debtor has produced investment policies for DOC Trusts and the Healthcare Foundation, but has not provided any additional investment policies, for example, relating to the Parish Trust Accounts. We understand that the parishes are required to deposit into the Parish Trust Accounts any cash in excess of two months required for operations. At the very least, we would expect that the Diocese have a written policy in place that specifies this requirement and other requirements related to the Parish Trust Accounts.

76. Request No. 35 is for “[d]ocuments sufficient to show all bank, money market, investment, or other accounts maintained by the Debtor over the past ten years (whether currently open or closed), including institution, account name, account type, account description, account number, general ledger account number, open date, close date, and current balance.” *Id.* ¶ 35. The Debtor’s statements and schedules do not provide the requisite level of detail required regarding

the bank accounts. Schedule A/B [Dkt. No. 1] identifies approximately 18 bank accounts, but only includes information related to (a) institution, (b) type of account, (c) last four digits of the account number and (d) balance. Montgomery's declaration also does not contain this level of detail. Paragraph 112 of the amended Montgomery declaration identifies approximately 25 bank accounts and only includes information related to (a) institution, (b) last four digits of the account number and (c) type of account. The Committee needs the level of detail that has been requested (versus the minimal details provided to date) in order to identify both current and closed accounts, and to analyze (on a select basis) cash management processes and transfers to/from/between cash and investment accounts. Some or all of this request may be fulfilled by obtaining access to the Debtor's accounting system (depending on how the Debtor utilized the accounting system); however, if the Debtor has a listing of the accounts that would be the simplest way to satisfy this request.

77. Request No. 38 is for financial documents for the Debtor's pooled investment accounts, including the Revolving Fund (also referenced as the "Parish Trust" or "Deposit & Loan Fund" account). *Id.* ¶ 38. This request is key to understanding the alleged trust funds held in the name of the Diocese for the benefit of parishes and other affiliates. The Parish Trust Agreements indicate in Section 1.2(b) that "[t]he assets of the Trust may, in the discretion of the [Debtor], be commingled with its own assets and with other assets it holds in trust . . ." Additionally, the Committee understands that the Parish Trust funds are commingled with respect to unrestricted and restricted assets and obtaining the Debtor's accounting system will assist in the evaluation of the extent of the commingling and assessment of whether assets are truly restricted.

78. Request No. 39 is for "[u]nderlying transaction data in electronic format (e.g. Excel, Access, SQL) used to generate the "Revolving Fund Statements" (Bates numbers DOCNJ_007099

– DOCNJ_007402).” *Id.* ¶ 39. This request may be partially fulfilled if the Debtor provides a copy of the accounting system data, as we understand the Revolving Fund Statements are prepared by the Debtor using NAV. This is an additional reason why it is critical for the Committee to obtain a complete backup of NAV. Having such information will enable the Committee to efficiently evaluate activity occurring in the Revolving Fund and compare and verify the detailed transactions identified on the Revolving Fund Statements.

79. Request No. 40 is for “[a]ll documents evidencing loan obligations or guarantees by the Debtor on behalf of any of the Other Catholic Entities.” *Id.* ¶ 40. This request helps establish pre-petition relationships between the Diocese and the Other Catholic Entities, including the instances where the Debtor and/or its assets have been relied upon as guarantees, pledges, or collateral for the benefit of Other Catholic Entities.

80. Request No. 41 is for “[a]ll historical activity schedules for all of the Debtor’s credit facilities detailing any draws, paydowns, interest accruals, or similar transactions.” *Id.* ¶ 41. The Committee may be able to obtain information regarding the PNC credit facility from PNC Bank. However, the Committee does not have information on whether the Debtor has additional credit facilities. The accounting system data will assist in (a) determining if other credit facilities exist (or did exist), (b) evaluating each of the draws, paydowns, or interest accruals, and (c) reconciling balances. The accounting system may also help in evaluating whether non-Debtors, including Parishes, were the recipient of any loan proceeds or assisted the Debtor with payments of any of the loan facilities.

81. Request No. 42 is for “[a]ll business plans and associated financial projections prepared for or by the Debtor.” *Id.* ¶ 42. The Debtor’s annual budgets will better enable the Committee to evaluate financial trends, the rigor of the Debtor’s budgeting process, the

reasonableness of post-petition projections prepared by the Debtor, both pre- and post-petition (including Plan/Disclosure Statement projections), and to gain a better understanding of annual variances in revenues and expenses.

82. Request Nos. 43–44 are for accounts receivable aging schedules and loans receivable aging schedules. *Id.* ¶¶ 43–44. If the Debtor provides the Committee with the NAV copy, this request may be fulfilled (at least partially). Such information will better enable the Committee to assess the reasonableness of reserves established by the Debtor against receivables, provide a detailed listing of the specific parties who owe the Debtor, assist in the evaluation of collectability of the amounts owed, and assist the Committee with its understanding and determination on whether additional future funds should continue to be advanced to non-paying Parishes or affiliates to preserve Debtor resources for the benefit of creditors.

83. Request Nos. 45–46 are for asset listings, schedules, or other documents sufficient to show donor-restricted funds of the Debtor. *Id.* ¶¶ 45–46. While the audit reports provide some information about this, they are insufficient to support alleged restrictions and do not provide detail as to specific assets. The audits contain highly summarized amounts and descriptions, not asset-by-asset detail. The Committee is asking for a schedule that identifies the specific individual assets, accounts, funds, etc. that the Debtor is alleging are unrestricted or restricted. Additionally, the Committee needs the underlying donor support (e.g. wills, bequests, letters, correspondence, agreements, contracts) supporting the alleged restrictions.

84. Request No. 47 is for documents sufficient to identify funds that are set aside for cemeteries within the Diocese. *Id.* ¶ 47. Such funds will often contain significant amounts that are purportedly set aside for the perpetual care of the cemeteries, and the Committee must

investigate these assets to determine whether they should be included as property of the Estate and/or whether funds set aside for the perpetual care of the cemeteries are excessive.

85. Each of the categories sought are properly within the scope of Rule 2004 and will not cause undue burden for the Debtor. In fact, if the Debtor provides the Committee with native copies of NAV and ParishSoft, many of these requests may be obviated and/or further narrowed.

WHEREFORE, the Committee respectfully requests that the Court enter an order, in the form submitted with the Motion, directing and compelling Debtor to promptly comply with the Rule 2004 Subpoena, and granting the Committee such other and further relief that is just and equitable under the circumstances.

Dated: February 22, 2021

Respectfully submitted,

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